

The Leesburg Planning Commission met on Thursday, April 3, 2003 in the Council Chambers at 25 West Market Street, Leesburg, Virginia. Staff members present for the meeting were Susan Swift, Anne Marie Eaton, Nancy Kitchens, John Johnson and Delane Parks.

**CALL TO ORDER:**

The meeting was called to order at 7:00 p.m.

**ROLL CALL:**

Present: Vice-Chairman Clem  
Commissioner Kennedy  
Commissioner Bangert  
Commissioner Dub'e  
Commissioner Hoovler  
Mayor Umstatt

Absent: Chairman Vaughan  
Commissioner Werner

**ADOPTION OF THE MINUTES**

Commissioner Kennedy made a motion to approve the minutes of March 6, 2003.

Motion: Kennedy  
Second: Hoovler  
Carried: 5-0-1

**REMARKS BY PETITIONERS**

Vice-Chairman Clem stated anyone who would like to come forward to speak to please sign up.

**PUBLIC HEARINGS****SE 2002-08 Holy Trinity Lutheran Church, 605 W. Market Street-Special Exception-Nancy Kitchens, Senior Planner**

Nancy Kitchens came forward and gave a brief overview of the above project. She stated the applicant is requesting approval to expand both the existing daycare center and the church. She stated this application has been referred out to various review agencies for comments. She stated the comments were enclosed in the packets at the preview a few weeks ago. She stated staff has met with the applicant and have resolved some of the major issues. She stated there are a few minor issues that have not been resolved yet, but

staff does feel comfortable enough to recommend approval.

She went over some of the issues that were brought up at the last meeting. She stated these issues could be resolved between now and the public hearing at the Town Council.

Ms. Kitchens showed the Commission and the public photos of the site.

Ms. Kitchens stated Mr. Mike Bomgardner was present to clarify any issues regarding traffic on Catoctin Circle.

Mr. Mike Bomgardner came forward and stated the only issue that needed to be resolved was getting the proper lanes. He stated they were getting a left turn lane and a reservation for a right turn lane.

Vice-Chairman Clem asked if anyone had any questions for staff.

Commissioner Hoolver asked about the asphalt trail.

Ms. Kitchens stated that is one of the minor issues that have not been resolved. She stated on one of the plans it reflects an asphalt trail. She stated a four- foot trail is being required.

Mr. Hoolver asked how much distance is there from the back of the property to the floodplain?

Ms. Kitchens stated Mr. Paul Gauthier of the Engineering Department has reviewed this and is requesting some sort of infill along the Town Branch (floodplain). She stated she could get more information on this matter.

Vice-Chairman Clem asked if the applicant would like to come forward and speak?

Mr. Peter Miller of Campbell, Miller and Zimmerman, P.C. who is representing The Holy Trinity Lutheran Church came forward and gave a brief overview of the applicant's request.

Mr. Miller read the following two issues and responses (6 and 7) to the Commission:

**Number 6** states that the "applicant shall provide full frontage improvements including a left turn lane and a shared northbound right turn lane along the Catoctin Circle frontage at development plan submission". For the record, the applicant is not proposing, and cannot agree to design, engineer and construct the road for a capital improvement plan that does not yet exist. Once a capital improvement plan is adopted it will be the Town's responsibility to construct the turn lane in accordance with that plan. It is our understanding and position that the special exception, given the anticipated traffic flow, will not require construction of a turn lane on church property. Applicant does intend to install road frontage improvement to include curb, gutter and a 4.67-foot asphalt trail.

The curb gutter will be installed at the existing edge of the pavement of Catoctin Circle.

**Number 7** references the reservation of a 6 foot wide, 270 foot long area beginning at coordinate N60degrees42'22"E37'. Subject to the verification of the coordinate, the applicant will reserve the land based upon the following language:

*This area is hereby reserved for the period of 21 years for the future right of way for acquisition, and construction by others of a right turn lane, at such time as this improvement is included in the Capital Improvements Plan for the Town of Leesburg. Acquisition may occur by purchase, condemnation or dedication.*

The applicant does not have the requisite authority to dedicate any land. Such dedication may only follow the applicant's Constitution and subsequent approval by the Circuit court of Loudoun County. Let the record reflect that pursuant to its Application for Special Exception the applicant is not making any promises to encumber it's property, or convey any portion of it's property in favor of the Town of Leesburg.

The Wells & Associates, LLC's report of March 14, 2003, indicates that a dedicated right turn lane on northbound Catoctin Circle is not warranted. A copy of that report is attached hereto for the record.

Mr. Miller stated he is asking the Commissioners to keep everything in perspective this is a church that has been in the community for a long time. He stated the church is only trying to expand. He stated they do not have financial resources to go into the engineering and construction of a road that is not even included in the towns Capital Improvement Plan. He stated he does not know what building this road would include. He stated what he believes is rational is that they build the curb and gutter at the edge of the existing pavement. He stated then when the Town sees fit to go ahead with its Capital Improvement Plan the Town can do what it wants with the proposed dedicated northbound straight and right turn lane; combination lane and than a left dedicated turn lane. There will be two northbound lanes.

Mr. Miller stated there would be no need to take any property from the church. The buffer area for the trail will be taken care of. He stated they will put the curb and gutter in where the road is today. He stated when the Town wants to go ahead and build that road it may do so and the church won't stand in its way where it won't infringe upon the church's property. When the town goes one step further and says you need a dedicated right-turn-lane; our traffic study indicates that is not warranted when you look at all of the indicators.

Mr. Miller stated at that point if you do have a dedicated right-turn-lane you are taking substantial land away; at least six feet wide away from the church; this has a snowball effect; it pushes things back and it effects the buffer; it effects where the trail is going to go; he stated ultimately it is pushing back and taking away thirteen necessary parking spaces. He stated they do not have any street parking available. He stated they do not want a situation where you have elderly people and children crossing the street. He stated

the church needs the parking spaces. He stated there is no current need for a dedicated right-turn-lane; there may never be a need for a right turn lane.

Vice-Chairman Clem asked if any members of the Planning Commission had any questions.

Commissioner Kennedy stated he was confused why the seven minor conditions have not been met yet; setting aside issues 6 & 7.

Mr. Miller stated the items just need to be added to the plat. He stated all the issues will be dealt with.

Vice-Chairman Clem asked if anyone from the public would like to come forward and speak for or against this application.

Mr. Joseph Zmuda of 423 Mosby Drive SW came forward.

Mr. Zmuda stated his yard abuts the church property. He stated he attended an informal meeting with the pastor and some of the church members. He stated he would like to see some type of landscaping along the edge of the property possibly some type of evergreen trees. He asked about the removal of trees during the construction of the building. He also stated he had a concern about the water run-off that fills up in the covert. He stated it is not a problem, now but there has been quite a bit of erosion. He stated he is concerned about the water run-off.

Mr. Clem asked if the applicant would like to respond to the above comments made by Mr. Zmuda.

Mr. Peter Miller stated in regards to dedication the church will do what the Town requires for the buffer; if more trees are required that could be done as a neighborly jester.

Vice-Chairman Clem stated when you get to the landscaping phase in the planning review process, to please think of the neighbors.

There was a brief discussion regarding the landscaping.

Mr. Bruce Thornberry of Christopher Consultants came forward to address the run-off issue and the landscaping. He stated there is a very shallow swale. He stated they would work on the grading to address the water run off.

Mayor Umstadd stated she would like to get staff to take a look at the erosion and the run-off. She stated if this is going to be a major problem within five years than staff should look in to it.

Ms. Kitchens stated she would contact the appropriate staff to look into the erosion –run-off matter.

Mr. Rick Landis, President of the congregation came forward and stated they will work with the neighbors.

Vice-Chairman Clem stated the run off has been an on going problem, he stated he would like to see something done about it before it gets worse. He stated they will leave the application open for ten days. He stated he has some concerns about the right turn lane.

Vice-Chairman Clem closed the public hearing for Holy Trinity Lutheran Church.

### **SUBDIVISION AND LAND DEVELOPMENT**

#### **Echo Waterline Extension-Preliminary/Final Development Plan (action)** **Delane Parks, Senior Planner**

Mr. Delane Parks came forward and gave a brief presentation on the above application.

Mr. Parks stated the Planning Department had no comments that needed to be addressed. He stated the one comment the Engineering Department had has been met. He passed around a written confirmation from Bowers and Associates that the Department of Engineering and Public Works comments dated March 7, 2003, recommending approval, will be satisfied.

Vice-Chairman Clem asked for a motion.

Commissioner Dube read the following motion: Motion to approve the Echo Entrance Road and Waterline Extension preliminary/final development plan, condition upon satisfactory resolution of the remaining comment from the Department of Engineering and Public Works dated March 7, 2003.

Commissioner Hoovler seconded.

**Motion:** Approved, vote 5-0-1

#### **Jerry's Chevrolet/Oldsmobile- Preliminary/ Final Development Plan (action) John Johnson, Senior Planner.**

Mr. John Johnson came forward and gave a brief presentation on the above application. He stated the few minor issues; one is there is to show a 42 inch ornamental iron fencing to go on top of the retaining wall, located on the west side of the property. He stated they also have asked for two additional 6 foot fencing to be provided in two locations to prevent a pedestrian cut-through from Market Street to 7-11 from the Manors Apartments; this was requested as part of the special exception. He stated the fencing would match the ornamental fencing. He stated the lighting plan needs to be revised. He stated staff is recommending conditional upon satisfactory resolution of the outstanding comments. He stated the applicant has provided a letter of agreement.

Vice-Chairman Clem asked for a motion.

Commissioner Kennedy read the following motion: I recommend conditional approval of the Jerry's Chevrolet/Oldsmobile Preliminary/final Development Plan conditioned upon satisfactory resolution of the Department of Planning, Zoning & Development review comments dated March 19, 2003 (including pending referrals noted) and the Department of Engineering and Public Works Review comments dated March 11, 2003 as agreed to in a letter from the applicant dated March 20, 2003.

Commissioner Bangert seconded.

**Motion:** Approved, vote 5-0-1

### **Zoning**

#### **South Street Day Care Center at the Park, 818 S. King Street Special Exception (action)- Nancy Kitchens, Senior Planner**

Nancy Kitchens came forward and gave a brief presentation of the above application.

Ms. Kitchens distributed new information that was just received before the meeting. She also distributed comments from staff addressing the information that was received.

Ms. Kitchens stated there are still twelve conditions that need to be met. She read condition number five: The applicant shall provide speed bumps/ speed tables/ and or speed humps and a raised pedestrian crosswalk with pavement markings in the child pick-up/drop off area. Ms. Kitchens read the following staff response to condition number 5:

*The applicant has agreed to the placement of high intensity striping and a marked pedestrian crossing in the pick-up/drop-off area, as well as a stop sign near the opposite end of the pick-up/drop-off area.*

She stated this was after speaking with the applicant's representative after the March 28 meeting. She stated in the comments dated March 26 there has been a change. She stated the applicant is opposed to putting in a stop sign as well as the high intensity striping. She read condition number 6: *The applicant shall provide "one-way" signage at the opposite end of the one-way child pick-up/drop off area.* She stated the applicant agreed to this condition. She has no opposition to this going before the BAR.

Ms. Kitchens read part of condition number 11: No more than 20 employees will work on the largest single shift of operation at this establishment. She stated the applicant wanted staff to remove that condition. She stated staff was not comfortable with that and wants to leave it at 20 in the largest single shift. She stated when it comes to parking it is based on

the number of employees in the largest single shift. She stated staff wants to keep that condition in there.

Mayor Umstadd asked about possibly a cleaning crew or other employees being present besides teachers.

Ms. Kitchens stated the applicant will address that issue.

She stated there is one late added condition. She read the following condition number 13,

***In comments recently received by the applicant, the following condition is proposed:***

*The applicant shall provide for the following: (1) the cost of removing the existing lane pavement markings on the westbound approach to the South King Street/Davis Avenue intersection, and (2) the applicant shall provide for the cost of the new pavement markings to create a separate left turn lane and a shared right/through lane. The cost shall be due at the time an occupancy permit is issued for the child care center that is the subject of this special exception (staff added this last sentence).*

Ms. Kitchens stated that is all of the changes she is aware of.

Mr. Randy Minchew of Walsh, Colucci, Lubeley who is representing the applicant came forward and briefly went over the 13 conditions. He stated the second condition which concerns full frontage improvements by the applicant on South King Street and Davis Court; he stated the applicant is asking for that to be deleted because under our Town Ordinance, DCSM and the Subdivision Land Development Ordinance those are only required unless a variation is approved by this commission; it is their intent to come forward with a variation application. He stated he thought that would be redundant; he stated he did not want to have a situation where the Planning Commission approves the variation and they would have to come back and amend the conditions. He stated in regards to the fence, he stated the applicant would like to put up a black-coated chain link fence. He stated the applicant favors using a raised crosswalk.

Mr. Tom Chamberlin the applicant came forward to answer questions.

Commissioner Dube asked about the one way sign.

Mr. Minchew agreed to the installation of the one way sign.

Commissioner Dube asked about the staffing ratio to the amount of children. He stated the 198 of mixed ages to 20 staff does not match what the Commonwealth requires.

Mr. Minchew asked Mr. Chamberlin if they will have 198 children at one time.

Mr. Chamberlin came forward and addressed the staff/ child ratio. He stated he was satisfied with using the state code's numbers regarding the amount of staff members to children.

Commissioner Bangert stated on the page the Commissioners were given it states the way the children are broken down are birth to age 16 months. She stated it states infant to two years, which it states its one staff person for every 4 children at that point. She stated the next level up is 16 months to two years where its one staff to five; we have two years to three years with eighty kids. She stated using the rules we have here with the mixed age group having the most number of staff people; the numbers do not add up.

Commissioner Dube stated as long as the number of employees meets the state licensing requirements than there is no issue. He stated his concern is that the twenty employee parking spaces are going to limit you.

Mr. Minchew stated they could add to condition number 11 that no more than 198 children shall be enrolled at the facility and at all times the ratio to staff members to children shall be in full conformance with State regulations.

Vice-Chairman asked Commissioner Dube if he was satisfied with the added language to condition 11 stated above.

Commissioner Dube stated yes.

Commissioner Bangert stated she is concerned about the chain-link fence. She stated no chain-link fence could hold children back. She stated she is very concerned with having the children this close to Route 15. She asked the applicant if there was anyway they could put the kids playground towards the back and move the parking lot towards the front near Route 15. She stated that way the kids would not be near the highway.

Mr. Chamberlin stated this has already been through the Board of Architectural Review for massing, parking and lay out. He stated he had no problem with putting a stop sign at the end of the drop off lane.

Mr. Minchew stated concerning the chain link fence he stated they could move the rails closer together and have narrower chain.

Mr. Chamberlin came forward and stated he would not like to go back to the BAR and have to state he has a commission over here that does not like what you approved over there.

Mr. Boucher came forward and stated the BAR has seen this special exception application in advance; he stated if there are issues dealing with this special exception; he stated the Planning Commission has the authority. He stated to the applicant this can go back to the BAR.

Commissioner Bangert stated her only concern is the safety of the children.

Commissioner Hoolver stated he shares the concerns about the safety of the children; he stated there are things you can do in terms of fencing.

Mr. Minchew stated they will look at a more opaque type of fencing like a board on board.

Mr. Hoolver stated maybe a brick wall with wrought iron on top.

Commissioner Kennedy stated a brick fence strikes me as the better choice; not only are we keeping children in; but we are keeping items out; "he showed a cigarette to the applicant".

There was a brief discussion regarding the speed bumps.

Commissioner Kennedy stated the staff request for speed bumps, speed tables or speed humps is not a ridiculous need to be looked at. He also stated he is concerned about the number of parking spaces. He stated there are two many issues on this project to move forward tonight. He stated he could move forward, but not in a positive matter.

Vice-Chairman Clem asked what is the desire of the Planning Commission; the staff recommends approval of this application subject to the following conditions; the conditions are there; the issue of the 20 employees has been resolved; the staff raised it from 18 to 20; than he would side with staff; he stated the only other outstanding issue is the speed bumps; he stated the fencing issue will be worked out with staff.

Ms. Kitchens came forward and stated the comments from Paul Gauthier. She stated regarding the chain link fencing she spoke with the Fairfax County licensing office; they do not have specific fencing requirements; before they do turn over the license to operate they do go out and inspect the site. She stated she asked about the chain link fence they stated no they do not like it. She stated this would leave us with a brick wall.

Vice-Chairman Clem asked for a vote.

Commissioner Hoolver stated he wants to make sure the issue with the fence will be dealt with in a positive way. He stated the applicant and staff will work it out.

Commissioner Kennedy stated we can change the condition or bring this back at a later date.

Mr. Minchew agreed to work on the issues and bring this back at a later date.

Vice-Chairman Clem stated this application will be tabled for two weeks.

**KFC/A&W- Special Exception (preview) Nancy Kitchens, Senior Planner**

Ms. Kitchens handed out some information to the Planning Commission.

Vice-Chairman Clem stated he does not like getting all these hand outs during the meeting. He stated it does not give the Commission enough time to digest the information.

Ms. Kitchens gave a brief overview of the above application. She stated there are a few outstanding issues with this application. She stated there are traffic comments and an issue regarding the buffer. She stated since there are some outstanding issues she feels it should be resolved at another time.

Vice-Chairman Clem stated he feels the same way; the commission has not had a chance to look at the new data that has come through tonight. He asked the applicant if he wanted to come forward.

Mr. Mark Nellis the applicant's representative stated he would not be giving a presentation tonight.

There was a brief conversation regarding the Loudoun County Fire Marshall's comments.

### **COMPREHENSIVE PLANNING**

Mr. Mike Freda, Budget Officer for the Town of Leesburg came forward and gave a brief presentation on the (CIP)/ Fee study update. He handed out to the Commissioners a copy of the fee study information. He briefly explained the comparisons from the surrounding jurisdictions.

### **TOWN PLAN STATUS REPORT**

No updates at this time.

### **Council Representatives Report**

Mayor Umstadd stated she met last week with the Airport Director, Town Manager, a Representative from Congressman Wolf's office and fairly senior individuals from the National Transportation Safety Board and Federal Aviation Administration. She gave a brief over view of what was discussed at the meeting.

### **Staff and Committee Reports**

Commissioner Kennedy gave a brief overview of the Committee Report.

### **New Business**

Commissioner Bangert stated she would like Lee Phillips, Chief of Current Planning to put together some information on the APA conference in Denver, Colorado.

There was brief discussion about changing reports and applicants bringing information at the last minute.

Meeting adjourned at 9:30 p.m.

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Vice-Chairman Jim Clem

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Anne M. Eaton, Recording Clerk